A

PP

v.

KAHAR SALIHIN

B

HIGH COURT MALAYA, JOHOR BAHRU
KANG HWEE GEE J
[CRIMINAL TRIAL NO: MT2-45-47-2002]
22 JUNE 2007

C ***CRIMINAL LAW:*** *Penal Code - Section 84 - Act of a person of unsound mind - Defence of insanity - Establishment of - Whether accused acquitted - Criminal Procedure Code, s. 347, 348*

D On 6 October 2001, at about three in the afternoon, the body of the victim lying motionless and bloody on the floor in a house in the compound of a mosque was found by a neighbour. At 6.45pm, Inspector Saipul Azman arrived and recovered the body of the victim who was by then dead. Subsequently the post mortem conducted at the General Hospital Kota Tinggi established that the deceased died as a result of stabbed and E chopped wounds on the body. The pathologist concluded that the wound that brought about the death of the deceased was the incised wound across the neck. In the course of investigation, the accused (husband of the victim) was arrested and detained and on F 24 October 2001, he gave a cautioned statement wherein he admitted causing the death of the deceased by inflicting the injuries as stated in the post mortem report. The accused was examined by the psychiatrist Dr Norazam Hj Harun, who testified that the accused was of unsound mind at the time he committed G the act and was subsequently charged with the offence of murder under s. 302 Penal Code of 26 October 2001.

Held:

(1) To establish a defence of insanity the accused must convince H the court on a balance of probability that he comes within the M'Naughten Rule. The law is reflected in our jurisdiction in s. 84 of the Penal Code. It is permissible and legitimate as a matter of law for the accused to rely on the evidence exposed in the prosecution's case itself without more, to satisfy the I court that he was insane. This court was bound to find that he had succeeded. (paras 10, 11 & 12)

(2) The evidence of the psychiatrist Dr Norazam was clear. He was certain that the accused was suffering from paranoid schizophrenia at the time he committed the act. The accused had hallucinations that his wife, the victim, had an affair with another male person and that other persons intended to poison him. Dr Norazam's evidence also disclosed that the accused was admitted previously to Hospital Permai for psychiatric treatment. Dr Norazam had conceded that it was likely that at the time the accused committed the offence he did not know what was happening and had the propensity to be aggressive and was at risk of causing harm to others if his needs were not met. (para 12)

(3) This court was bound at this stage to acquit the accused and in due compliance with s. 347 of the Criminal Procedure Code to 'state specifically' that he had committed the act he was charged with, but by reason of unsoundness of mind, he was incapable of knowing the nature of the act alleged as constituting the offence or that it was wrong or contrary to the law. In compliance with s. 348(1) of the Criminal Procedure Code, the accused was ordered to be kept in safe custody at Hospital Permai. (para 13)

[Order accordingly.]

Legislation referred to:
Criminal Procedure Code, ss. 347, 348(1)
Penal Code, ss. 84, 302

For the accused - John Fernandez; M/s John Fernandez & Co
For the prosecution - Yong Leou Shin DPP

Reported by Suhainah Wahiduddin

JUDGMENT

Kang Hwee Gee J:

This Is My Oral Judgment: (ex-tempore)

[1] On 6 October 2001 at about three in the afternoon, a neighbour living in the same area discovered the body of the victim lying motionless and bloody on the floor in a house in the compound of a mosque. She then summoned another neighbour to call the police.

[2] Some three hours later at about 6.45pm Inspector Saipul Azman arrived and recovered the body of the victim who was by then dead.

[3] Subsequently the post mortem conducted at the General Hospital Kota Tinggi established that the deceased died as a result of stabbed and chopped wounds administered on the right back, left chest and at the outer back of the left forearm below the elbow, at the middle front of the left forearm above the wrist. There was also a composite incised wound across the neck.

[4] The pathologist concluded that the wound that brought about the death of the deceased was the incised wound across the neck.

[5] In the course of the investigation, the accused (the husband of the victim) was arrested and detained and on 24 October 2001 at about 3.45pm he gave a cautioned statement wherein he admitted causing the death of the deceased by inflicting the injuries as stated in the post mortem report.

[6] The accused was then sent for observation at Hospital Permai and was examined by the psychiatrist Dr. Norazam b. Hj. Harun, who testified that the accused was of unsound mind at the time he committed the act.

[7] The accused was subsequently charged with the offence of murder under s. 302 Penal Code of 26 October 2001.

[8] At the trial counsel for the accused Encik Fernandez did not challenge the admission of the cautioned statement which incriminated him with the murder. He also accepted the evidence of the psychiatrist with respect to the mental state of the accused at the time he committed the offence. At the close of the case for the prosecution Encik Fernandez submitted that the accused was not guilty of murder as he was insane at the time he committed the act. The prosecution did not in this instance deem it necessary to disagree with the submission of Encik Fernandez.

[9] It is clear that the prosecution had at the close of its case proved by the accused's own cautioned statement that he had caused the death of his wife by the wounds that he had inflicted.

[10] In law there is a presumption that every man is sane and to have intended the consequence of his act. To establish a defence of insanity therefore the accused must convince the court on a balance of probability that he comes within the M'Naughten Rule, that is to say.

> at the time of committing the act, he was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong.

[11] The law is reflected in our jurisdiction in s. 84 of the Penal Code which says as follows:

> **84. Act of a person of unsound mind.**
>
> Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

[12] It is permissible and legitimate as a matter of law for the accused to rely on the evidence exposed in the prosecution's case itself without more, to satisfy the court that he was insane. I am bound to find that he had succeeded. The evidence of the psychiatrist Dr. Norazam is clear. He was certain the accused was suffering from paranoid schizophrenia at the time he committed the act. The accused had hallucinations that his wife the victim had an affair with another male person and that other persons intended to poison him. Dr. Norazam's evidence also disclosed that the accused was admitted previously to Hospital Permai for psychiatric treatment. On cross-examination Dr. Norazam conceded it was likely that at the time he (the accused) committed the offence he did not know what was happening and had the propensity to be aggressive and was at risk of causing harm to others if his needs were not met.

[13] I am therefore bound at this stage itself to acquit the accused and in due compliance with s. 347 of the Criminal Procedure Code to "state specifically" that he had committed the act he is charged with, but by reason of unsoundness of mind, he was incapable of knowing the nature of the act alleged as constituting the offence or that it was wrong or contrary to law.

[14] In compliance with s. 348(1), I order the accused to be kept in safe custody at Hospital Permai. The senior assistant registrar of the court shall report the case for the orders of the Ruler of the State of Johor.